UNITED NATIONS

AT

Administrative Tribunal

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16 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 756

Case No. 830: OBIMBA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 12 July and 16 September 1994, Godwin Obimba, a former staff member of the United Nations Children's Fund, hereinafter referred to as UNICEF, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 9 December 1994, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal to order:

> "... the revocation of the letter for my separation from service due to the recommendation of the Joint Disciplinary Committee constituted to investigate my alleged involvement in the loss of Toyota spare parts from the store.
>
> ..."

Whereas the Respondent filed his answer on 3 August 1995;

Whereas the Applicant filed written observations on 9 October 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF on 1 May 1989, as a Driver at the GS-2, step I level, on a three-month fixed-term

appointment at the Kaduna Office in Nigeria. He served thereafter on a series of fixed-term appointments, the last one expiring on 30 April 1994. The Applicant was dismissed for misconduct, with effect from the same date.

In a memorandum dated 30 April 1993, the Zonal Programme Officer at the UNICEF Office in Kaduna, wrote to the Chief of Operations in Lagos, concerning the theft of six cartons of vehicle spare parts. He attached a report of an investigation he had conducted with a Programme Officer and an Administrative/Finance Officer.

The investigation report noted that a Security Guard had "noticed suspicious movement" of the Secretary of the Administration and Finance Unit (the Secretary) and the Applicant, who was the driver of the vehicle which left the office premises after loading cartons from the store. The report concluded that the Secretary had "been involved in stealing office property" and recommended that he be dismissed with immediate effect.

The Applicant, in a statement made for the investigation, reported that he had been asked by the Secretary to help him transport cartons from the store to the Secretary's house on two occasions. He had asked what was in the cartons but was told not to question a superior officer. The Applicant was asked to repeat his statement in front of the Secretary, who denied any involvement.

On 3 September 1993, the UNICEF Representative in Lagos informed the staff that he had established an ad hoc disciplinary committee (ad hoc JDC) to investigate the loss of spare parts and mectizan medicine tablets in the Kaduna Office. The ad hoc JDC submitted its report to the Representative on 24 September 1993. It concluded that the Secretary of the Administration and Finance Unit, Kaduna, was "the number one suspect" in the theft of spare parts and recommended his summary dismissal.

In its report, the committee noted that the Applicant "did not appear in front of the committee despite the special message

sent to him by the office." The report indicates that the Applicant was on annual leave when the office sent this message and that he "only reported to the office on 22 September three days after his official resuming date, stating that his wife is seriously ill." In its conclusions, the committee cited the Applicant as "an accomplice" and recommended his summary dismissal. The committee did not reach a conclusion on the theft of the medicine.

In a letter dated 12 April 1994, the Deputy Executive Director (Operations) transmitted to the Applicant an excerpt of the committee's report pertaining to him, noting from its findings and supporting documentation:

> "(a) That you admitted to using UNICEF vehicle to transport cartons out of the premises with [... X],
>
> (b) That you gave contradictory statements claiming that you connived with [... Y] to frame [... X] for the theft,
>
> (c) That you illegally removed UNICEF inventory records from the Finance Section,
>
> (d) That you refused to appear in front of the Committee despite a message sent to you."

She further informed the Applicant as follows:

> "On the basis of all the evidence presented, I have decided, on behalf of the Executive Director, to accept the recommendation of the JDC [Joint Disciplinary Committee] that you be separated from service in accordance with Staff Regulation 10.2 and Staff Rule 110.3 (vii). Your separation date will be effective upon the expiration of your fixed-term appointment, which will be c.o.b. [close of business] 30 April 1994."

On 25 April 1994, the Applicant appealed the decision and requested further review. On 21 June 1994, the Director, Division of Personnel, replied that the decision was final.

On 9 December 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant could not disobey the instructions of a more senior staff member and was therefore obliged to transport the cartons and retrieve documents as directed.

2. The Applicant was unable to appear before the ad hoc committee because of his wife's ill-health.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has broad discretion with regard to disciplinary matters, and this includes determinations of what constitutes misconduct warranting dismissal. The Secretary-General's decision to dismiss the Applicant was a valid exercise of that discretionary authority.

2. The Applicant's dismissal was preceded by an investigation which afforded him a reasonable opportunity to present his version of events.

The Tribunal, having deliberated from 12 to 16 July 1996, now pronounces the following judgement:

I. The Applicant appeals from a decision by the Secretary-General to dismiss him summarily, pursuant to a recommendation by an ad hoc Joint Disciplinary Committee (ad hoc JDC). The Applicant was charged as an accomplice to the theft of six cartons containing spare auto parts from the UNICEF Office at Kaduna, Nigeria. The Respondent established an ad hoc JDC after a preliminary enquiry had found that the Secretary of the Administrative and Finance Unit had been involved in "stealing office property". He was suspended in May 1992. The ad hoc JDC found, inter alia, that the Applicant, a driver, was an accomplice to the theft and recommended his "summary dismissal for misconduct, illegal use of UNICEF vehicle, theft of documents and insubordination."

The ad hoc JDC found several deficiencies in the management, supervision and control of the UNICEF's stores at Kaduna and recommended several measures for improvement.

II. The Applicant contends that he has been improperly and unjustly accused of being an accomplice to the theft of motor car supplies. He further pleads that allegations against him of illegal use of UNICEF vehicles, of theft of documents and of insubordination are all ill-founded and based on an improper analysis by the ad hoc JDC and by the Respondent. He further alleges that his dismissal was predetermined by the Respondent. Therefore, the investigation by the ad hoc JDC was no more than a pretence. The Tribunal finds no evidence to support this allegation and therefore rejects it.

In fact, the Tribunal finds that the ad hoc JDC carefully examined all the evidence before it and questioned many witnesses before reaching its conclusions. The Tribunal finds that the conclusions by the ad hoc JDC are supported by the evidence.

III. The Tribunal notes the Applicant's contention that, as a driver, he was merely carrying out the orders of his superior. This contention cannot be sustained in the context of a theft. There is nothing to show that the Applicant reported any of these activities to the appropriate authorities, as he should have done.

IV. The Tribunal further notes the contradictory statements made by the Applicant regarding his attempts to inculpate the Secretary. These contradictions only undermine the Applicant's credibility.

Lastly, while the Applicant's failure to appear before the ad hoc JDC, when summoned, may have been justified by his circumstances as he claims, the Tribunal notes that the ad hoc JDC did consider the Applicant's testimony subsequently.

The Tribunal finds that no new evidence has been presented to it. It finds no reason to disagree with any of the conclusions reached by the ad hoc JDC.

V. The Tribunal generally accepts that the Respondent has wide discretion in disciplinary cases and it will not intervene unless its exercise is vitiated by bias or prejudice or other extraneous factors, or tainted by lack of due process. The Tribunal does not find any such flaws in the present case. Further, the Tribunal does not find that the sanction imposed by the Respondent is disproportionate to the offence with which the Applicant was charged.

VI. In the light of the above considerations, the application is rejected in its entirety.

(Signatures)

Samar SEN
President

Mikuin Leliel BALANDA
Member

Mayer GABAY
Member

Geneva, 16 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary